The principal case further held that if the beneficiaries in such fund, instead of pursuing the right of action against the bank, recover their loss from the surety upon the official bond, the right to bring the action against the bank passes to the surety under the general principles of subrogation and by what amounts to an equitable assignment. Travelers' Co. *v.* Gt. Lakes Co. (C. C. A. 6) 184 Fed. 426, 107 C. C. A. 20, 36 L. R. A. (N. S.) 60; American Co. *v.* National Bank, 97 Md. 598, 55 Atl. 395, 99 Am. St. Rep. 466.

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**Contempt—Obstructing Justice—Newspaper Publication Pending Proceeding—In re Independent Pub. Co., 228 Fed. 787.**—The court in the principal case held that where a newspaper article, concerning a person on trial for felony, was read by jurors and made the discharge of the jury necessary, its publication was punishable as a contempt, though there was no willful intent to obstruct justice, the intent to publish the article being all the willful intent necessary, as the publishers knew the trial was on, that the article would probably be read by jury and judge, and that its probable consequence would be the obstruction of the administration of justice.

The court used the following language: "Respondents further contend that the publication being without 'willful intent' to obstruct justice, is not contemptuous. But they or those for whom they must respond, whose acts are their acts, knew the trial was on, and intended to and voluntarily did publish the article, and that is all the willful intent necessary in any case. 'If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent.' Ellis *v.* United States, 206 U. S. 257, 27 Sup. Ct. 602, 51 L. Ed. 1047, 11 Ann. Cas. 589. Doubtless nothing was intended but a 'good story' for general circulation, but they knew the circumstances; that the trial was on; that the article would probably be read by jury and judge; and they knew the probable consequences, obstruction of the administration of justice, and an accounting by the responsible publishers. In the like case of Newspaper Co. *v.* Com., 188 Mass. 449, 74 N. E. 682, 3 Ann. Cas. 761, it is accordingly held that intent to publish is alone material, though lack of intent to thereby obstruct justice may be considered in mitigation of punishment. If the article was true and not only believed true, it is neither defense nor mitigation. 'A publication likely to reach the eyes of a jury * * * would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not to be reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by

any outside influence, whether of private talk or public print. What is true with reference to a jury is true also with reference to a court. * * * When a case is finished, courts are subject to the same as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument, or intimidation hardly can be denied.' Patteron's Case, 205 U. S. 462, 27 Sup. Ct. 558, 51 L. Ed. 879, 10 Ann. Cas. 689. Here, in brief compass, is the law, its reasons and limitations. At argument, that the court had not admonished the jury not to read accounts of the trial was mentioned. It may be answered the article was more than an account of the trial; that no one, including courts, are bound to anticipate and guard against another's negligence, to say nothing of violation of law; that therein is no defense; and that such publications are contempts even if not read by jury or judge, because of the probability that they will be or may be despite admonition, because of their evil tendencies and possibilities. See Newspaper Co. *v.* Com., 172 Mass. 294, 52 N. E. 445, 44 L. R. A. 159, 70 Am. St. Rep. 280."

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**Mortgages and Deeds of Trust—Relation of Mortgagor to Property—Duties Assumed to Mortgagee—Davis v. Virginia, etc., Co., 22 Fed. 663 (C. C. A.).**—A mortgagor or his agents, operating the property in due course of business, is not technically a trustee for the mortgagee, and is under no obligation to pay over the income or profits to the mortgagee, even where the mortgage covers income, until demand is made for the income, or for surrender of possession of the property; but the mortgagor holds the stable property under the implied confidence reposed and obligation assumed to preserve it intact as security for the mortgage debt. A mortgagor is liable if he wastes or converts to his own use the mortgaged property, and the property itself may be followed by the mortgagee in the hands of third persons, except purchasers without notice, without the necessity of proving fraud.

In the principal case the court uses the following explanatory language: "On reason and authority the general rule is obvious that the mortgagor, or his agents, operating the property in due course of business, is not technically a trustee for the mortgagee, and is under no obligation to pay over the income or profits to the mortgagee, even when the mortgage covers income, until demand is made for the income or for surrender of the possession of the property. Galveston R. Co. *v.* Cowdrey, 11 Wall. 459, 20 L. Ed. 199; Gilman *v.* Ill. Tel. Co., 91 U. S. 603, 23 L. Ed. 405; Dow *v.* Memphis R. Co., 124 U. S. 652, 8 Sup. Ct. 673, 31 L. Ed. 565; Sage *v.* Memphis & L. R. Co., 125 U. S. 361, 8 Sup. Ct. 887, 31 L. Ed. 694. Therefore, as to the income received in due course of business, the mortgagor corporation sustains no fiduciary relations to the mortgagee. But it seems equally obvious that the mortgagor holds the stable mort-